

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LARRY DARNELL MITCHELL,

Defendant-Appellant.

UNPUBLISHED

July 8, 1997

No. 192672

Recorder's Court

LC No. 95-006556

Before: Cavanagh, P.J., and Doctoroff and D.A. Teeple*, JJ.

MEMORANDUM.

Defendant appeals by right his jury conviction of felonious assault. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant claims the trial court erred in refusing to admit into evidence defendant's proposed Exhibit 1, a written statement of the complainant in this cause, James Siebert. A few days after the incident in question, at the urging of police officers, Siebert put in writing his recollection of the entire affair. As Siebert was a prosecution witness, this past recorded recollection was admissible at defendant's behest under MRE 803(5). However, any error in failing to admit the statement was not prejudicial to defendant, because the written statement, as established on cross-examination, corroborated the trial testimony of the witness that defendant initiated the only violence between them. The witness verified that his written statement did not contain "any word or any sentence or anything in that statement wherein you say you hit Mr. Mitchell first." Since the statement thus corroborated the inculpatory version of the incident which Siebert provided for the jury at trial, its exclusion from evidence cannot be said to have resulted in a miscarriage of justice or otherwise to have harmed defendant's right to a fair trial,

* Circuit judge, sitting on the Court of Appeals by assignment.

and appellate relief on these facts is unwarranted. *People v Grant*, 445 Mich 535, 544; 510 NW2d 900 (1994).

Affirmed.

/s/ Mark J. Cavanagh

/s/ Martin M. Doctoroff

/s/ Donald A. Teeple